



DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 259, 260, 399

[Docket No. DOT-OST-2022-0089]

RIN 2105-AF04

Airline Ticket Refunds and Consumer Protections

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT).

ACTION: Public hearing; Reopen comment period.

SUMMARY: This notice announces a virtual public hearing on certain issues related to the U.S.

Department of Transportation's Notice of Proposed Rulemaking on Airline Ticket Refunds and Consumer Protections. By this notice, the virtual public hearing on this rulemaking, originally scheduled for March 14, 2023, is rescheduled to March 21, 2023. Through this notice, the Department is also reopening the comment period for this rulemaking from March 21 through March 28, 2023.

DATES: The virtual hearing will be held on March 21, 2023, from 10 a.m. to 5 p.m. Eastern Time. The hearing is open to the public, subject to any technical and/or capacity limitations. Requests to attend the hearing must be submitted to

https://usdot.zoomgov.com/webinar/register/WN_qIdrspjdTPexlvXSL5YNXg. We encourage interested parties to register by Thursday, March 16, 2023. Communication Access Real-time Translation (CART) and sign language interpretation will be provided during the hearing. Requests for additional accommodations because of a disability must be received at clereece.kroha@dot.gov by Thursday, March 16, 2023.

ADDRESSES: The virtual hearing will be open to the public and held via the Zoom Webinar Platform. Virtual attendance information will be provided upon registration. An agenda will be available on the Department's Office of Aviation Consumer Protection website at <https://www.transportation.gov/airconsumer/latest-news> in advance of the hearing.

FOR FURTHER INFORMATION CONTACT: To register and attend this virtual hearing, please use the link: https://usdot.zoomgov.com/webinar/register/WN_qIdrspjdTPexlvXSL5YNXg. Attendance is open to the public subject to any technical and/or capacity limitations. For further information, please contact Clereece Kroha, Senior Trial Attorney, by email at clereece.kroha@dot.gov or by phone at (202) 366-9041.

SUPPLEMENTARY INFORMATION:

I. Background

On August 22, 2022, the U.S. Department of Transportation (DOT or Department) published in the Federal Register a notice of proposed rulemaking (NPRM) that proposes to codify its longstanding interpretation that it is an unfair business practice for a U.S. air carrier, a foreign air carrier, or a ticket agent to refuse to provide requested refunds to consumers when a carrier has cancelled or made a significant change to a scheduled flight to, from, or within the United States, and consumers found the alternative transportation offered by the carrier or the ticket agent to be unacceptable (87 FR 51550). The NPRM proposes to define, for the first time, the terms significant change and cancellation. It would also require U.S. and foreign airlines and ticket agents to inform consumers that they are entitled to a refund if that is the case before making an offer for travel credits, vouchers, or other compensation in lieu of refunds. The Department further proposes to require that U.S. and foreign air carriers and ticket agents provide non-expiring travel vouchers or credits to consumers holding non-refundable tickets for scheduled flights to, from, or within the United States who are unable to travel as scheduled in certain circumstances related to a serious communicable disease. If the carrier or ticket agent received significant financial assistance from the government because of a public health emergency, the Department proposes to require U.S. and foreign air carriers and ticket agents provide refunds, in lieu of non-expiring travel vouchers or credits. The NPRM proposes to allow carriers and ticket agents to require consumers provide evidence to support their assertion of entitlement to a travel voucher, credit,

or refund. The comment period for the NPRM, which was extended for approximately 4 weeks in response to a request for additional opportunity to comment¹, closed on December 16, 2022.

On December 16, 2022, Airlines for America (A4A) and International Air Transport Association (IATA) (collectively “Petitioners”) filed a petition to request a public hearing on the NPRM pursuant to the Department’s regulation on rulemakings relating to unfair and deceptive practices, 14 CFR 399.75.² The Petitioners specifically raise three issues regarding the NPRM and request that these issues be addressed in the hearing. For each issue, Petitioners argue that it meets the threshold set forth in section 399.75 for granting a public hearing because the underlying proposed rule depends on conclusions concerning one or more specific scientific, technical, economic, or other factual issues that are genuinely in dispute; because the ordinary public comment process is unlikely to provide an adequate examination of the issue to permit a fully informed judgement; because the resolution of the disputed factual issues would likely have a material effect on the costs and benefits of the proposed rule; because the requested hearing on the issue would advance the consideration of the proposed rule and the General Counsel’s ability to make the rulemaking determinations required by the Department’s regulation; and because granting the petition would not unduly delay the rulemaking.

By a notice dated March 3, 2023, the Department granted the requests for a public hearing and originally scheduled the hearing for March 14, 2023.³ The Department noted that the scope of the hearing would be limited to the factual issues specified in the March 3 notice. On March 6, 2023, A4A requested that the public hearing be rescheduled and for additional explanation of the hearing procedure. A4A requested that the hearing be rescheduled by two weeks, stating that the five business days provided for the hearing was insufficient to identify speakers and to compile data responsive to the subjects presented in the March 3 notice. A4A also stated that it would have difficulty finding participants due to the hearing being scheduled during the Spring Break season. A4A noted that

¹ 87 FR 68944 (Nov. 17, 2022)

² See, *Airlines for America and the International Air Transport Association Petition for Hearing*, <https://www.regulations.gov/comment/DOT-OST-2022-0089-5296>.

³ 88 FR 13387.

scheduling this hearing in close proximity (within two days) of a DOT public hearing on a different rulemaking⁴ is an unreasonable expectation for stakeholders who must prepare for both hearings.

A4A also reiterated its request for a neutral hearing officer to preside over the hearing, expressing its disagreement with the appointment of Ms. Blane Workie, the Department's Assistant General Counsel for the Office of Aviation Consumer Protection and the Department's designated Aviation Consumer Advocate. On March 8, 2023, IATA wrote to express support for A4A's requests.

II. Rescheduling of Public Hearing

After careful consideration of the points raised by A4A, the Department has decided to reschedule its public hearing on the Airline Ticket Refunds and Consumer Protections NPRM to March 21, 2023. While the Department was surprised to learn that the party that had requested the public hearing was unprepared to present views on the topics for which they had requested the hearing, the Department wants to ensure that stakeholders, including A4A, have an adequate opportunity to be heard on this rulemaking and for this reason, has determined that a seven-day extension to assist with preparation for the hearing is reasonable. As part of this rescheduling, the length of the hearing will also be extended to ensure adequate time is afforded to those who wish to comment. The hearing will be held from 10 a.m. to 5 p.m. ET. As noted in Section IV of this notice, if all participants have expressed their views prior to the scheduled 5 p.m. end time, the Department may end the hearing prior to 5 p.m.

III. Agenda, Hearing Officer, and Post-Hearing Actions

The Department has considered A4A's request for the appointment of a different hearing officer and has decided to retain the appointment of Blane Workie as the designated Hearing Officer. The Department notes that the Hearing Officer's role is to preside over the hearing. In that regard, Ms. Workie's appointment is appropriate because: (1) she is a career civil servant who will execute this role in a neutral, fair, and professional manner; (2) her responsibilities as an Aviation Consumer Advocate are those that she has had as an Assistant General Counsel of the Office of the Aviation Consumer Protection and such responsibilities do not make her biased; and (3) the Hearing Officer's

⁴ 88 FR 13389.

role is to conduct the meeting using generally accepted meeting management techniques and to not serve as a decisionmaker. As stated in the Department's regulations in 14 CFR 399.75, the General Counsel considers the record of the hearing and makes a reasoned determination whether to terminate the rulemaking, proceed with the rulemaking as proposed, or modify the proposed rule.

The regulations further require the General Counsel to explain, in an appropriate rulemaking document published in the *Federal Register*, the rationale for the post-hearing decision made by the General Counsel. The rationale for the post-hearing decision made by the General Counsel will be explained in any final rule or other appropriate rulemaking document issued by the Department for this action.

IV. Public Participation and Procedures

The March 21, 2023, hearing will begin at 10 a.m. ET, and the Department will provide time for opening remarks by the Hearing Officer. The meeting will then transition to public comments and presentations. Any oral comments presented should be limited to the subjects described in the March 3 notice and be brief so that all participants will have an opportunity to speak. If a meeting participant wishes to speak on a particular topic identified in the March 3, 2023, notice,⁵ the participant must register in advance to speak on the topic. We ask individuals requesting to speak to specify the length of time that they would like to have allotted to them. Based on the number of participants who register to speak on a particular topic, the Department will allot time to individual speakers in a way that maximizes each speaker's ability to present their views and to ensure a wide variety of perspectives. The Hearing Officer may ask clarifying questions during the hearing but will otherwise reserve speaking time after opening remarks for meeting participants. The intent of the hearing is to ensure that the Department is able to hear from petitioners and other interested parties regarding the issues raised in the petition. If the volume of requests for oral comments received and any additional comments, responses, and/or presentations that participants may wish to make is such that all participants have expressed their views prior to the scheduled 5 p.m. end time, the Department may end the hearing prior to 5 p.m.

⁵ <https://www.govinfo.gov/content/pkg/FR-2023-03-03/pdf/2023-04494.pdf>.

Individual members of the public who wish to present oral comments must notify the Department of Transportation, no later than Thursday, March 16 via the meeting's registration link and specify in the registration those topics on which they wish to provide comments. All written materials (e.g., PowerPoint presentations) presented at the hearing will be made part of the meeting's record.

As discussed in Section V of this notice and consistent with the requirement of 14 CFR 399.75, the Department plans to reopen the comment period for this rulemaking on March 21, 2023, the date of the hearing. The comment period will remain open for seven (7) days, through March 28, 2023. Interested parties who wish to file statements or comments that are specifically related to the subject(s) discussed at the hearing may submit their written comments electronically to the NPRM Docket (DOT-OST-2022-0089).

After the hearing and after the record of the hearing is closed, the hearing officer will place on the rulemaking docket minutes of the hearing reflecting the evidence and arguments presented on the issues.

V. Reopening of Public Comment Period

Consistent with the procedural requirement under section 14 CFR 399.75, which provides that interested parties shall be given an opportunity to file statements or comments after a hearing on the proposed regulation, the Department is reopening the comment period for the NPRM from March 21 through March 28, 2023. New comments submitted to the Docket should pertain to subjects discussed in the petition for hearing and during the March 21, 2023, hearing.

VI. Viewing Documents

Documents associated with the NPRM on Enhancing Transparency of Airline Ancillary Service Fees may be accessed in the rulemaking Docket (DOT-OST-2022-0089). Dockets may be accessed at <https://www.regulations.gov>. After entering the relevant docket number click the link to "Open Docket Folder" and choose the document to review.

Signed in Washington, D.C., on this 9th day of March 2023.

John E. Putnam,

General Counsel,

U.S. Department of Transportation.

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